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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/761,027	01/20/2004	Heike Lerg	100718-392/ Beiersdorf 48	1877

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GREENBLUM & BERNSTEIN, P.L.C.  
1950 ROLAND CLARKE PLACE  
RESTON, VA 20191

EXAMINER

HARDEE, JOHN R

ART UNIT PAPER NUMBER

1751

DATE MAILED: 10/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/761,027	Applicant(s) LERG ET AL.	
	Examiner John R. Hardee	Art Unit 1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 16-49 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 16-49 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |  |
|---|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                      | 5) <input type="checkbox"/> Notice of Informal Patent Application                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 103***

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 16-49 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Klueppel et al., US 5,145,665. The reference discloses preparations for dental and oral hygiene. These compositions contain alkyl glycosides (abstract). Said glycosides may have a degree of oligomerization of 1. The alkyl group is derived from a primary alcohol of 8-22 carbons (col. 2, lines 11-32). The glycoside is present at 0.1-5% by weight (col. 2, lines 52-54). Humectants may be added to the compositions, including propylene glycol (col. 3, line 28). Use of butylene glycol, a one-carbon homolog of propylene glycol, would be expected by the person of ordinary skill in the surfactant art to provide similar properties. Additional humectants include water-soluble Carbopols. Examiner takes the position that this teaching embraces crosslinked materials. No specific concentration of polymer is disclosed, but 0.40-1.5% of polymer is exemplified in the formulation examples. Exemplification of a gel tooth cream makes obvious the formulation of gels. Addition of polishing substances (solids) and liquids such as flavorings and water is disclosed at col. 3, lines 9-19 and is exemplified. Addition of 5-15% of glycerol is disclosed at col. 3, lines 48-49. Use of flavorants, disclosed at col. 3, line 12, would act as perfumes. This reference differs from the claimed subject matter in that it does not disclose a composition which reads on applicant's claims with sufficient specificity to constitute anticipation.

It would have been obvious at the time the invention was made to make such a composition, because patentees teach that all of the components claimed by applicant are suitable for inclusion in a tooth-cleaning composition. Regarding the recitation of copolymers, examiner maintains the position that the teaching in the reference of "carboxyvinyl polymers" may be fairly construed to embrace carboxyvinyl copolymers in view of the teaching of the utility of the Carbopol polymers as a class, which includes copolymers. Applicant discloses at p. 7, lines 23-25 of the specification that the Carbopols include acrylate-alkyl acrylate copolymers. Applicant's recitation of shampoo and shower preparations is a statement of intended use, which is afforded little patentable weight.

3. Claims 16-49 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Giret et al., US 5,409,640. The reference discloses personal cleansing products. Said compositions preferably contain a polymeric skin or hair conditioning agent. Among the anionic polymers taught as useful are the Carbopols (col. 8, lines 12-20). Amounts of anionic polymer are not disclosed, but examiner takes the position that amounts at the low end of applicant's recited range are customary in the art, and therefore obvious. Compositions further comprise 0.1-20% of a nonionic or betaine surfactant. Among the nonionics disclosed as suitable are alkyl polysaccharides bearing an alkyl group of 8-18 carbons. Alkyl monosaccharide is preferably present as well at 20-70% of the total saccharide content (col. 6, lines 42-46). Inclusion of about 3% to about 40% of moisturizers, including glycerol and propylene glycol, is disclosed at col. 8, lines 43-44. Glycerol is highly preferred. Use of butylene glycol, a one-carbon

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homolog of propylene glycol, would be expected by the person of ordinary skill in the surfactant art to provide similar properties. Addition of perfume is exemplified.

Preparation of emulsions, which comprise droplets of embedded liquid, is exemplified.

This reference differs from the claimed subject matter in that it does not disclose a composition which reads on applicant's claims with sufficient specificity to constitute anticipation. It would have been obvious at the time the invention was made to make such a composition, because the reference teaches that all of the components claimed by applicant are suitable for inclusion in a personal care composition. Applicant's recitation of shampoo and shower preparations is a statement of intended use, which is afforded little patentable weight.

### ***Response to Arguments***

4. Applicant's arguments filed August 29, 2006 have been fully considered but they are not persuasive. Applicant argues that the examiner has not shown that the polymers recited by applicants are obvious over Klueppel. At col. 3, lines 37+, the reference discloses the utility of water-soluble Carbopol carboxyvinyl polymers. Carboxyvinyl is synonymous with acrylate. Applicant argues that a flavorant in a toothpaste would not be considered a perfume. This is not persuasive because it is notoriously well known that most of what is perceived as flavor is, in fact, odor. That which imparts a pleasant or at least acceptable flavor, to use applicant's definition of a flavorant, will perforce impart a pleasant or at least acceptable odor. Applicant argues that the person of ordinary skill would not be motivated to formulate the compositions of Klueppel into

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shampoos or shower preparations. This is not persuasive because the reference discloses cleaning compositions, i.e., apposite art, which contain the ingredients recited by applicant. Applicant argues that the Klueppel compositions cannot contain embedded solids, gases or liquids. Note the disclosure at col. 3, lines 9+ that the compositions may comprise such well known insolubles as chalk, silica and aluminum oxide. These are disclosed as polishing agents which must be solid to function as such. Regarding method claim 49, gum tissue is a species of skin, as are the lips and surrounding tissues, which generally bear some amount of hair.

Applicant argues that the Giret reference gives a boilerplate disclosure of numerous polymers. This is not persuasive because, regardless of the breadth of the disclosure, it makes obvious the use of polymers recited by applicant. If the claimed polymers confer some unexpected property, this should be demonstrated by applicant in the form of a timely-filed affidavit. Regardless of the optional nature of some of the disclosed ingredients, they are nonetheless disclosed and therefore obvious to include. Finally, applicant argues that the examiner has not shown why it would be obvious to make all of the choices enumerated by applicant at pages 6 and 7 of the response. The reason is because the reference teaches that one may do so.

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to the examiner, Dr. John R. Hardee, whose telephone number is (571) 272-1318. The examiner can normally be reached on Monday through Friday from 8:00 until 4:30. In the event that the examiner is not available, his supervisor, Mr. Douglas McGinty, may be reached at (571) 272-1029.

The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8100.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

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For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "J. Hardee", with a stylized, cursive script.

John R. Hardee  
Primary Examiner  
September 26, 2006